



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

May 4, 1995

Honorable David M. Motley  
Kerr County Attorney  
County Courthouse, Suite B20  
700 East Main Street  
Kerrville, Texas 78018-5324

Letter Opinion No. 95-030

Re: Whether a transfer of a juvenile case under Family Code section 51.07(a) requires the consent of the receiving court (ID# 31512)

Dear Mr. Motley:

You ask whether a transfer of a juvenile case under Family Code section 51.07(a) requires the consent of the receiving court. You suggest that subsection (b), as well as subsection (a), of section 51.07 may be relevant to your question. Section 51.07 provides as follows:

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 of this code, the juvenile court, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code, may transfer the case and transfer the transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this code.

(b) When a child who is on probation moves with his family from one county to another, the juvenile court may transfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest of the child. *In all other cases of transfer, consent of the receiving court is required.* The transferring court shall forward transcripts of records and documents in the case to the judge of the receiving court. [Emphasis added.]

You explain that in a case involving a juvenile who lives in another county but who committed an offense in Kerr County, it has been the practice of the Kerr County juvenile court to hear and adjudicate the case and then, upon finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision, to try to get the receiving court's advance approval to transfer the case for disposition under subsection (a). You state that the Kerr County juvenile court seeks such approval and works to coordinate the transfer with the receiving county because it is sensitive to the burden that the transfer will place on the limited resources of the receiving county's probation department, not because it believes it is legally required to obtain a receiving court's consent to transfer a case

under subsection (a). According to your letter, in numerous instances a receiving court has refused transfer of a case, claiming that the sentence emphasized above in subsection (b) applies to transfers under subsection (a).

We believe that consent of the receiving court is not required for a transfer under subsection (a). That provision expressly provides that a *predisposition* transfer requires "the consent of the child and appropriate adult given in accordance with Section 51.09 of this code." Under the rule of statutory interpretation known by the maxim *expressio unius est exclusio alterius*, the express consent requirements in subsection (a) exclude the inference that the receiving court's consent also is required. Subsection (b) specifically applies only to a *postdisposition* transfer of a child who is on probation. The consent requirement in that provision thus applies to any case in which a child on probation has not moved with his family to another county. A commentator has written in *Texas Practice*, under the heading "Transfer to Another County After Disposition Hearing," as follows:

After the disposition hearing has been concluded and the juvenile is placed on probation, the juvenile court may transfer the case to the county of the child's residence if the residence is in a different county in Texas, and if the transfer is in the best interest of the juvenile.


However, consent of the receiving court is required, unless a child already on probation moves with his family from 1 county to another.

29 THOMAS S. MORGAN, JUVENILE LAW AND PRACTICE § 726 (Texas Practice 1985) (footnotes omitted), *cf. id.* § 712 (predisposition transfer under subsection (a) "does require the consent of the child and a parent, guardian, or guardian ad litem"). This passage is in accord with our interpretation of subsection (a) as applying only to predisposition transfers and subsection (b) as applying only to postdisposition transfers.

### S U M M A R Y

A transfer of a juvenile case under Family Code section 51.07(a) does not require the consent of the receiving court.

Yours very truly,



James B. Pinson  
Assistant Attorney General  
Opinion Committee